Supreme Court, U. S.
FILED
MAR 14 1980
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

Term ..October..1979.....

No. 79-975

David Bell,

Petitioner,

v.

State of New York,

Respondent.

SUPPLEMENTARY ARGUMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR SECOND CIRCUIT

David Bell, Pro Se
Petitioner
P.O. Box 130
Monticello N.Y. 12701
(914) 794-5300

ARGUMENT

POINT I - A sentence of a fine only is no bar to consideration of a claim of due process deprivation by federal courts.

The district court in dismissing petitioner's writ of habeas corpus, belittled the seriousness of the civil disabilities which survived the conviction and compared the sentence, " as being analagous to a fine only, for which habeas corpus will not lie". (opinion of Judge Carter). Even if the record did not clearly refute the lower court's contention; appellant submits that Thompson vs City of Louisville (362 US 199) would be controlling.

Thompson involved two $ 10 fines for disorderly conduct and resisting arrest, without incarceration. The Supreme Court in granting certiorari and examining the record stated; " that although the fines are small, the due process questions presented are substantial ------", and then reversed the conviction as justified by the clear deprivation of due process claims of petitioner. (Compare Yicks vs Hopkins, 118 US 356).

Also compare petitioner's conviction of reckless endangerment in second degree and resisting arrest with a sentence of two $ 750 fines and conditional release for one year probationary period; during which his civil liberties were curtailed and all of which survive to present.

Petitioner submits that had he refused to pay the fine, he would have exposed himself to the risk of incarceration; in such case the procedural bar raised by district court would have no grounds.

" The absence of confinement does not render the punishment trivial". (See dissent of Douglas infra 910) Is the law-abiding citizen -entrapped by circumstance - to be penalized because he obeys the court ?

POINT II - The court should consider the appeal as a proceeding for declaratory judgement under 28 USC 2201, if it finds insufficient grounds to support habeas corpus.

In Jones vs U.S. et al, 419 US 907, C.A. 9th circ., certiorari denied; Justice Douglas in his dissent raises a question which appellant submits is timely and proper for the instant cause, by this court.

Douglas' view in that matter correctly pointed out that, " although the writ was denied below on the sole ground that petitioner was not in custody as required by 2241 -------- the district court should have treated petitioner's complaint as either one seeking a declaration that his punishment was not lawfully imposed, 28 USC 2201, or one to compel expunction of his conviction, 28 USC 1361,

and reached the merits (emphasis added)".

" A determination of these claims by a federal court is an indispensable safeguard of the rights of the accused". (Jones)

In the Jones appeal, he was convicted by court martial of failure to obey an order. The punishment was a fine of $ 1500 without incarceration. After exhausting appeals, petitioner sought a writ of habeas corpus from the district court.

In this appeal (Bell) he also seeks a hearing of the merits of his allegations of a deprivation of due process, after exhausting his state appeals.

Petitioner respectfully submits that a denial of certiorari - not on the merits - would be no bar to a new procedding by petitioner in federal courts under 28 USC 2201.

POINT III - The collateral issue of the merits of petitioner's claims would assist the court's understanding of the significance of the federal question raised herein.

Appellant submits that the record of the trial the Grand Jury minutes and other collateral evidence (not now part of the record) would clearly indicate the validity of petitioner's allegations that he was denied a fair trial and due process; and that the

conviction and sentence was a gross miscarriage of justice, to wit:

1. That highly inflammatory hearsay testimony (of alleged crimes by other, and not connected or charged to petitioner) was permitted at the trial, which influenced the jury to the extreme prejudice of petitioner. (Testimony of Mulcahey, R. 144-149)

2. That at the trial, petitioner first became aware that the same prejudicial testimony was permitted at the Grand Jury proceedings, with a display of narcotics and other material to inflame the jury as against petitioner, (although appellant was not accused or charged with knowing of these alleged crimes by others). An application by petitioner to have the Grand Jury minutes brought up and considered by the appellate court,in camera, to support his allegations; was denied.

3. That petitioner was denied by the trial court of an offer of proof, of a similar incident at the same premises about two months previous (armed robbery, assault requiring hospitalization of bar manager with 38 stitches in his head and an impersonation by someone as an officer, to which the sheriff of Sullivan County could testify) This defense would have supported the absence of intent and justification for petitioner's acts.(R. 601 - 619)

4. That highly infammatory statements were made to the news media by police, when arrested, which connected him by implication with alleged crimes by other (narcotics and prostitution); and crime of attempted murder (never charged in the information or by Grand Jury). That the same inflammatory statements were repeated during the trial and widely publicized by the news media, which influenced the jury as against the petitioner (evidence not part of the trial record and in possession of appellant is available at an evidentiary hearing.)

5. That two politically powerful state agencies (New York State Liquor Authority and New York State Police) were involved in a conspiracy to"bust" the appelant's liquor license, and it is alleged placed heavy political pressure on the court to obtain a conviction.

Two case arising from the abortive incident, alleging violations of appellant's civil rightss were subsequently filed in the Southern District Court of New York. Bell vs Roth et al, (76 Civ 420) a conspiracy action was dismissed and on appeal was confirmed by the 2nd circ. (79 -7014). Bell vs Ward, (76 Civ 2507)police miscnduct) was settled with ad mission by State of New York of appellant's claim.

In both these suits, extensive depositions and evidence was collected, which if presented at an evidentiary hearing would support appellant's allegations of a conspiracy.

CONCLUSION

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED: AND THE ENTIRE RECORD BROUGHT UP FROM LOWER COURTS FOR A FULL EVIDENTIARY HEARING OF PETITIONER'SCOMPLAINT.

Dated:

Respectfully Submitted

David Bell